(1)

89-625

CONFIDENTIAL

No. ——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

TROY HILL,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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32 pp

QUESTIONS PRESENTED

1. Whether the rewording of Florida's DR 2-103 more closely to the District of Columbia's CPR 2-103 (1980) and the Justice Department's recommendations both noted in Mr. Justice Marshall's 1978 concurring opinion in *Ohralik*, is the reasonable fit between the legislative ends and means chosen to accomplish those ends consistent with Mr. Justice Scalia's *S.U.N.Y. v. Fox* majority opinion, considering that non-commercial speech may be effected by Florida's restrictions that are not narrowly enough drawn with regard to commercial speech?

2. Whether the following examples of the honest, unpressured activity considered in Mr. Justice Marshall's 1978 *Ohralik* concurring opinion and subsequently enacted into practice in the District of Columbia's CPR 2-103 (1980) are protected by the First Amendment's freedom of speech and association clauses and by the Fourteenth Amendment's due process, equal protection and privileges and immunities clauses:

(a) offering a business card to a daily acquaintance reasonably believed not to need legal services and

(b) one time, unanticipated casual remarks about their accidents in the course of general conversation to two longstanding acquaintances, who although known to petitioner, may not be relatives or close friends for purposes of DR 2-104?

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TROY HILL,

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THE FLORIDA BAR,

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner humbly and respectfully submits this prayer for a writ of certiorari to review the judgment of the Supreme Court of Florida rendered in this case on April 18, 1989.

OPINIONS BELOW

Since this matter is confidential, the order of the Supreme Court of Florida denying rehearing is unreported (App. 4a). Since this matter is confidential, the order of the Supreme Court of Florida denying petitioner's appeal is unreported (App. 5a). Since this matter is confidential, the order of the referee is unreported (App. 8a). Since this matter is confidential, the order of the Grievance Committee is unreported (App. 11a).

JURISDICTION

The order of the Supreme Court of Florida denying petitioner's rehearing was entered on April 18, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (A).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution provides, in relevant part:

> Congress shall make no law . . . abridging the freedom of speech, . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Sixth Amendment to the Constitution provides, in relevant part:

> [The accused shall] have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the Constitution provides, in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28, section 1257(A) of the United States Code, provides in relevant part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Florida's Disciplinary Rule 2-103(a) provides, in relevant part:

> A lawyer shall not initiate in-person contact to recommend employment, as a legal practioner, of himself . . . to a non-lawyer who has not sought his advice regarding employment of a lawyer except as provided elsewhere in these rules.

Florida's Disciplinary Rule 2-104(a) provides, in relevant part:

> A lawyer who has given in-person unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that: A lawyer may accept employment by a close friend, relative. . . .

District of Columbia's Code of Professional Responsibility 2-103, provides, in relevant part:

> (A) A lawyer shall not seek, by in-person contact, his or her employment . . . by a non-lawyer who has not sought his or her advice regarding employment of a lawyer, if: (1) The solicitation involves the use of a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of DR 2-101(B); or (2) The solicitation involves the use of undue influence; or (3) The potential client is apparently in a physical or mental condition which would make it unlikely that he or she could exercise reasonable, considered judgment as to the selection of a lawyer.

STATEMENT OF THE CASE

A. Introduction

Petitioner is a young lawyer just starting his career who has offered his business card to people in his daily life who were not involved in accidents. If they need to choose a lawyer in the future, their day to day knowledge of petitioner offers an alternative to choosing an unknown lawyer from television or the yellow pages.

Florida's DR 2-103(A) provides solicitation is prohibited except as provided elsewhere in the rules. DR 2-104(A) provides a lawyer may give in-person unsolicited

advice to laymen that they should obtain counsel or take legal action if that lawyer does not accept employment resulting from that advice unless it is advice given to a relative or close friend.

The Florida Bar's complaint was based upon two specific incidents of giving in-person unsolicited advice, and in general offering a card to people who did not ask for it. Petitioner contends that he did not violate the rules because he did not accept employment from either of the two individuals. The Supreme Court of Florida has held petitioner has violated these rules by his conduct.

Both incidents of the alleged solicitation involved people with whom petitioner had longstanding contact. Both testified that the grievance committee's report of "undue influence" and "intimidation" based upon their testimony was complete error. Both did not use petitioner's services. Both did not know of this complaint on their behalf until called to testify by the Florida Bar. The complaint was brought to the Florida Bar's attention by a co-worker upset more than one year after the incidents in the complaint over a completely unrelated matter. Finally, in the first of the two incidents, petitioner never suggested employment of himself, and the casual suggestion of petitioner's services to the second and much better known person was for sums of which petitioner could only hope to gain insignificant monetary gain at best.

B. Statement of Facts

This petition for a writ of certiorari is humbly and respectfully submitted as a prayer for relief from discipline imposed for two related courses of conduct that are allowed by the District of Columbia's Code of Professional Responsibility 2-103 (1980) and have been ruled to not be allowed by Florida's parallel Disciplinary Rules 2-103, both derived from the ABA's Model Code of Professional Responsibility 2-103.

The first course of conduct concerns petitioner offering his card to people in general in his daily life who were not involved in accidents. The second course of conduct concerns petitioner's one time passing remarks about their accidents to two people known to petitioner for a long time, a guard Mullan and a librarian Kelley. Petitioner has been swimming every day for over fifteen years and reading history books in his leisure time for as long. Many people at the library and the beach where petitioner swims have come to know petitioner in the six years since he moved to Tampa, Florida. Guard Mullan worked at the beach where petitioner swims everyday and they talked for long periods of time 5-6 days/week for at least nine months before guard Mullan was involved in a minor automobile accident. Librarian Kelley checked out history books for petitioner for at least 3½ years before she was involved in a minor automobile accident.

The subject of their accidents innocently came up in general conversation one time, they both were not interested in pursuing claims and the subject was never mentioned a second time. Petitioner never sought out these or any others involved in accidents. Petitioner did not know librarian Kelley as well as guard Mullan and never suggested his services to Kelley, only that she might have legal recourse.

Over one year later, petitioner had an unpleasant misunderstanding concerning the library closing time with co-workers of librarian Kelley, but in no way involving librarian Kelley.

Days after his misunderstanding, petitioner was informed by the Florida Bar he was being investigated for offering his card to people that did not ask for it at the behest of a library official.

Through their investigation of petitioner, the Florida Bar called guard Mullan and librarian Kelley as the key

witnesses against petitioner. Please see guard Mullan's statement. Appendix 1a. Neither guard Mullan nor librarian Kelley were aware of the complaint on their behalf until they were called as witnesses by the Florida Bar. Both guard Mullan and librarian Kelley strongly disagreed with the Grievance Committee report based upon their testimony that they were "virtual strangers" upon whom petitioner used "undue influence," and "intimidation." Again, please see Appendix 1a.

Petitioner requested a hearing. In the several months before the hearing bar counsel Greenberg said he could ask the referee at the hearing for discipline going beyond the Grievance Committee's recommended private reprimand. At that point petitioner offered to plead guilty and withdraw his request for a hearing to avoid any chance of the more serious discipline mentioned by bar counsel Greenberg. Bar counsel Greenberg then agreed in writing to recommend only the private reprimand recommended by the Grievance Committee. Please see Appendix 3a.

Minutes before the hearing, bar counsel renewed all his previously mentioned discipline and added disbarment. For 4½ hours off the record the unrepresented petitioner requested a continuance and the assistance of legal counsel to consider the substantial changes in the proceedings. Finally, the referee summoned a lawyer from the hallway and gave petitioner only 15 minutes in which to decide to go to trial with that lawyer or to plead guilty. The lawyer from the hallway did not practice in this field of law, gave incorrect advice, and petitioner pleaded guilty. The next day petitioner requested rehearing based upon petitioner's not having a "reasonable opportunity to employ and consult with counsel," *Birt v. Montgomery*, 725 F.2d 587 (11th Cir. 1984); *French v. State*, 161 So.2d 879 (Fla. 1964) and ineffective assistance of state appointed counsel, *Matire v. Wainwright*, 811 F.2d 1430 (11th Cir. 1987); *Strickland v. Washington*, 446 U.S. 668 (1984).

The rehearing was denied. On appeal to the Supreme Court of Florida, no error was found regarding the plea of guilty. The Supreme Court of Florida said on that basis they would not reach the merits of the First Amendment and Fourteenth Amendment claims raised by the two courses of conduct of:

1. offering a card to daily acquaintances not in need of legal services who do not ask for one and
2. general conversation in daily life to longstanding acquaintances about their accidents on one occasion, where by their own testimony there was no coercion, undue influence or other such behavior.

Both these courses of conduct are allowed by the District of Columbia's Code of Professional Responsibility 2-103 but not allowed by Florida's parallel Disciplinary Rule 2-103.

REASONS FOR GRANTING THE WRIT

Only two cases have come before this Court concerning in person solicitation, *Ohralik v. Ohio State Bar Association*, 436 U.S. 447 (1978) and *In re Primus*, 436 U.S. 412 (1978). The District of Columbia Bar has enacted rules allowing the honest, unpressured activity suggested by the Justice Department in 1974 and addressed in Mr. Justice Marshall's concerning opinion in *Ohralik*. This instant case will give this Court the opportunity to directly rule on the honest, unpressured activity suggested by the Justice Department, Mr. Justice Marshall's concurring opinion in *Ohralik*, and enacted into practice in the District of Columbia, but not allowed in the state of Florida.

Mr. Justice Powell's majority opinion in *Ohralik* concluded,

> The facts in this case present a striking example of the potential for overreaching that is inherent in a lawyer's in-person solicitation of professional em-

> ployment. They also demonstrate the need for prophalactic regulation in furtherance of the State's interest in protecting the lay public. We hold the application of DR 2-103(A) and 2-104(A) does not offend the Constitution (at 469).

Mr. Justice Marshall's concurring opinion continues,

> The facts in *Ohralik* provide classic examples of "ambulance chasing," fraught with obvious potential for misrepresentation and overreaching (at 470) . . . . [There are] obviously substantial interests that the State has in regulating attorneys to protect the public from fraud, deceit, misrepresentation, overreaching, undue influence, and invasions of privacy. But where honest, unpressured "commercial" solicitation is involve—a situation not presented in either of these cases—I believe it is open to doubt whether the State's interests are sufficiently compelling to warrant the restriction on the freeflow of information which results from a sweeping nonsolicitation rule and against which the First Amendment ordinarily protects (at 476).

A possible example of permitted in-person solicitation is found in the dicta of another Ohio case,

> Nor is it amiss to note that opulent lawyers and large law firms . . . do spend large sums of money for memberships in country clubs, entertainment in fashionable surroundings and other amenities of social intercourse. That the primary purpose of these expenditures is the attraction of law business and not hospitality is attested by the fact that such lawyers regularly claim and the Internal Revenue Department regularly allows deductions for these expenditures as "business" and not "personal" expenses. I do not disapprove of this practice. It is not only a dignified method of solicitation that is generally recognized, but it has the unique advantage of having the United States government pay a substantial portion of its cost. *In re Cohn*, 139 N.E. 2d 301, 306 (1956).

Mr. Justice Marshall's 1978 opinion calls attention to the Justice Department's 1974 suggestion to reword the disciplinary rules to permit solicitation that is free from false, misleading, undignified or champertous content. Mr. Justice Marshall also calls attention to the then pending change in 1978 of the District of Columbia bar association's rule consistent with the 1974 Justice Department recommendations, which in 1980 has come to pass in the District of Columbia Code of Professional Responsibility 2-103, which states:

> Solicitation of Professional Employment.
>
> (A) A lawyer shall not seek, by in-person contact, his or her employment (or employment of a partner or associate) by a non-lawyer who has not sought his or her advice regarding employment of a lawyer, if: (1) The solicitation involves use of a statement or claim that is false, fraudulent, misleading or deceptive within the meaning of DR 2-101(B); or (2) The solicitation involves the use of undue influence; or (3) The potential client is apparently in a physical or mental condition which would make it unlikely that he or she could exercise reasonable, considered judgment as to the selection of a lawyer.

The influential California bar considered similar changes in 1978, but did not reword their rules as explicitly as the District of Columbia bar, *Protection for Attorney Solicitation*, 33 Univ. of Florida L. Rev. 698, 726 n. 220, (1981). In 1981 the ABA's Commission on Evaluation of Professional Standards (Kutak Commission) applied *Ohralik's* ambulance chasing prohibitions, and allowed the direct mail solicitation which subsequently has been approved by many state bar associations. However, the Kutak Commission did not address the difficult subject of in person solicitation free of false, misleading, undignified or champertous content.

Mr. Justice Scalia's recent *S.U.N.Y. v. Fox*, No. 87-2012, June 29, 1989, opinion orders governmental re-

strictions upon commercial speech must employ means narrowly tailored to achieve the desired objective, requires only a reasonable fit between the legislature's ends and the means chosen to accomplish those ends, but not necessarily the least restrictive means.

The District of Columbia's 1980 enactment of CPR 2-103 proves there is a means more narrowly tailored to achieve the desired objective than Florida's DR 2-103. Mr. Justice Scalia's *S.U.N.Y.* opinion is concerned that the governmental regulation restricting commercial speech may restrict some non-commercial speech as well. Not allowing petitioner to casually mention his livelihood unless asked to do so may restrict non-commercial speech of general conversations about our legal system, people considering legal related professions or even referrals to other non-affiliated attorneys with no benefit to petitioner other than aiding someone to find legal counsel.

Mr. Justice Scalia's suggestion of the plain meaning of the words of the law echoed by Mr. Justice Kennedy's suggestion of working with the basic meaning of words in a normal manner may be applied to the First Amendment's freedom of speech and freedom of association clauses and the interrelated Fourteenth Amendment due process, equal protection and privileges and immunities clauses.

Laurence H. Tribe's American Constitutional Law, 1988 summarizes Supreme Court First Amendment analysis with the burden being on the government to justify a restraint on free expression (at 1059) and equal protection requiring some rationality in the nature of the class singled out (at 1440). District of Columbia lawyers should not be treated differently than Florida lawyers. Different rules may be prescribed for distinct areas where there is a reasonable basis for the limitation, 16 C.J.S. § 931 (p. 146), but there does not seem to be a reasonable basis for limitations on lawyers' First Amend-

ments rights based only upon their physical presence in either the District of Columbia or the State of Florida.

The related privileges and immunities question is also whether a Florida lawyer in the District of Columbia can engage in conduct allowed by the District of Columbia's CPR 2-103 which is not allowed by Florida's DR 2-103, and conversely whether a District of Columbia lawyer in Florida is not allowed to engage in conduct permitted by the District of Columbia's CPR 2-103, which is not allowed by Florida's DR 2-103.

In sum, the facts in this case are about as close to the opposite of *Ohralik's* classic ambulance chasing as possible. Our instant facts of honest, unpressured activity can provide this Court with perhaps the best opportunity to address:

(1) The validity of the District of Columbia's CPR 2-103,

(2) The honest, unpressured activity described in Mr. Justice Marshall's concurring opinion in *Ohralik*,

(3) The Justice Department's 1974 suggestions to reword disciplinary rules to permit all solicitation free from false misleading, undignified or champertous content,

(4) Recognize situations that the Kutak Commission did not address where in-person contact is not likely to pose the type of dangers which justify the ambulance chasing prohibition, and

(5) Whether Florida's DR 2-103 needs to be more narrowly tailored to achieve the desired objective so it will not be used for complaints against conceivably any practicing lawyer who offers his card to someone who did not ask for it, such complaints ostensibly for solicitation but perhaps motivated by personal reasons concerning non-commercial speech which is truly protected by the First Amendment.

CONCLUSION

For the foregoing reasons, the writ should be granted.

Respectfully submitted,

OLIVER SHAEVITZ
146-08 Hillside Avenue
Jamaica, NY 11435
(718) 291-3400
Counsel for Petitioner

APPENDIX

APPENDIX

APPENDIX

Mr. Edward P. Mullan
1508 Seaspray Lane
Dunedin, Florida 34698
Saturday 5th September 1987

TO WHOM IT MAY CONCERN:

Mr. Hill has shown me the findings of the Grievance Committee report dated 8 July 1987 that:

1. Mr. Hill and myself were "virtual strangers," and

2. Mr. Hill's recommending employment of himself was "persistent, overbearing and unwanted" and his manner in recommending employment of himself "clearly created undue influence and intimidation."

It is my intention to outline below why the findings of the committee are in error.

1. *"Virtual Strangers."*

Due to the fact that we had nearly daily contact with each other over the preceeding nine (9) months, this would hardly qualify us as being.

"virtual strangers."

Mr. Hill may have perceived me as a close friend through our daily contact.

2. *"Persistent, overbearing and unwanted" and "Clearly created undue influence and intimidation."*

In dealing with your findings that he was persistent in recommending that I engage his services as attorney for my accident injury claim, I fell that your findings are in error.

In reference to my accident, Mr. Hill and myself only had one contact. One contact does not as far as I am concerned constitute persistence.

As far as I am concerned he was not overbearing in that once I declined that was the end of it.

I don't see that his approach was unwanted, but it was unsolicited by myself.

At no time did I feel Mr. Hill was trying to exert undue influence on my judgment or subject me to any kind of intimidation.

Sincerely,

/s/ Edward P. Mullan
MR. EDWARD P. MULLAN

LAW OFFICES OF
TROY HILL

101 East Kennedy Boulevard
Tampa, Florida 33602
(813) 225-5555

Monday 8 February 1988

Mr. Richard A. Greenberg, Esquire
Assistant Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport Marriott Hotel
Tampa, Florida 33607

RE: The Florida Bar v. Troy Hill
Case No.: 71,483.

Dear Mr. Greenberg,

This is to acknowledge our conversation concerning your recommendation of a private reprimand to the presiding Referee if the case is proven by clear and convincing evidence and you feel I am moving expeditiously.

If you feel I am not moving expeditiously, please allow notice and an opportunity to remedy such. Hopefully such notice will be unnecessary.

Thank you in advance for your prompt attention and co-operation in this matter.

Yours truly,

/s/ Troy Hill
TROY HILL

kg
Enc.

SUPREME COURT OF FLORIDA

Tuesday, April 18, 1989

Case No. 71,483

THE FLORIDA BAR,
Complainant,

v.

TROY HILL,
Respondent.

CONFIDENTIAL

Upon consideration of the Motion for Rehearing filed in the above cause by respondent.

IT IS ORDERED that said Motion be and the same is hereby denied.

[SEAL]

A True Copy

TESTE:

/s/ Sid J. White
SID J. WHITE
Clerk, Supreme Court

TC
cc: Troy Hill, Esquire
Richard A. Greenberg, Esquire
John T. Berry, Esquire

SUPREME COURT OF FLORIDA

No. 71,483

THE FLORIDA BAR,
Complainant,

vs.

TROY HILL,
Respondent.

CONFIDENTIAL

[February 16, 1989]

PER CURIAM.

Troy Hill seeks review of a referee's report in a disciplinary proceeding. We have jurisdiction. Art. V, § 15, Fla. Const.; ch. 1, rule 3-3.1, Rules Regulating Fla. Bar.

The Florida Bar charged Hill with two violations of Disciplinary Rule 2-103(A) of the now superseded Code of Professional Responsibility. The charges arose from two episodes or Hill soliciting clients in person, one at the Tampa-Hillsborough County Library, the other at a hotel in Clearwater Beach. Both episodes involved multiple incidents of Hill approaching people (some of whom had been injured in automobile accidents), passing out his business cards, and discussing what sum might possibly be recovered.

After a grievance committee recommended discipline, Hill pleaded guilty before a referee to both violations. The plea was the result of negotiations between Hill,

Bar counsel, and the referee. The referee, pursuant to these discussions, found Hill guilty and recommended a private reprimand and other discipline. Soon afterwards, Hill moved for a rehearing, which was denied.

Hill now attacks the findings of fact as well as the discipline. He alleges that his plea was coerced by an off-the-record threat made by Bar counsel and was not a counseled confession; therefore, the referee should have allowed him to withdraw the plea. Without reaching the question of whether any sixth amendment rights that apply to criminal defendants attach in attorney discipline cases, we reject this argument. The record clearly discloses that Hill did discuss his plea with a lawyer, appointed as a friend of the court on the date of the hearing, and did so at some length. Even under the rigorous standards of criminal proceedings there was sufficient legal advice to remove any taint that the plea was not made knowingly. The referee did not abuse her discretion in not allowing Hill to withdraw his plea.

As we have found no error regarding the plea of guilty, we need not decide Hill's other argument, which is that the evidence against him was insufficient. The Bar's complaint contained allegations that formed a sufficient factual basis for acceptance of the plea, and one of the counts is additionally supported by the one deposition in the record.

We approve the referee's report in all respects. In accordance with the referee's recommendations, Hill shall receive a private reprimand to be administered before the local grievance committee and be placed on probation for one year under the following conditions:

> (A) That [Hill] satisfactorily complete a minimum of three hours CLE credit each in courses on Legal Ethics, the Rules of Civil Procedure, and Law Office Management.

(B) That [Hill's] practice be supervised for a period of one year by a member of The Florida Bar Certified or Designated in the area of personal injury law. The supervising attorney shall be chosen at [Hill's] request, subject to approval by The Florida Bar.

(C) The supervising attorney shall file quarterly reports with Branch Staff Counsel, The Florida Bar, Tampa, Florida.

Costs of the proceeding were found to be $1,426.31 and are taxed against Troy Hill, for which sum let execution issue.

EHRLICH, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, J.J., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

CONFIDENTIAL

Case No. 71,483
TFB #86-19,679(13D)
and #87-25,989 (13D)

THE FLORIDA BAR,
Complainant,

v.

TROY HILL,
Respondent.

REPORT OF REFEREE

I. *Summary of Proceedings*: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to article XI of the Integration Rule of The Florida Bar and Rule 3-7.5, Rules of Discipline, a final hearing was held on May 20, 1988. The enclosed pleadings, orders, transcripts and exhibits are forwarded to the Supreme Court of Florida with this report, and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Richard A. Greenberg

For the Respondent: Pro se

II. *Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged*: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

The respondent entered a plea of guilty to all allegations contained in the Complaint.

III. *Recommendation as to Whether or Not the Respondent Should Be Found Guilty*: Respondent should be found guilty of minor misconduct for violation of Disciplinary Rule 2-103(A) in both Count I and Count II of the Complaint.

IV. *Recommendation as to Disciplinary Measures to be Applied*: I recommend that the respondent receive a private reprimand to be administered before the local grievance committee. In addition, respondent should be placed on a period of probation for one year. The conditions of the probation are as follows:

(A) That respondent satisfactorily complete a minimum of three hours CLE credit each in courses on Legal Ethics, the Rules of Civil Procedure, and Law Office Management.

(B) That respondent's practice be supervised for a period of one year by a member of The Florida Bar Certified or Designated in the area of personal injury law. The supervising attorney shall be chosen at respondent's request, subject to approval by The Florida Bar.

(C) The supervising attorney shall file quarterly reports with Branch Staff Counsel, The Florida Bar, Tampa, Florida.

V. *Personal History and Past Disciplinary Record*: After findings of guilt and prior to recommending discipline to be imposed pursuant to Rule 3-7.5(k)(1)(4), Rules of Discipline, I considered no personal history and the fact that respondent has no prior disciplinary record.

1. Age: 31
2. Date Admitted to Bar: July 11, 1983
3. Prior Disciplinary Record: None
4. Mitigating Factors: None

VI. *Statement of Costs and Manner in which Costs Should Be Taxed*: I find that the costs of this proceeding should be assessed against the respondent attorney. It is recommended that all such costs and expenses and interest at the statutory rate shall accrue and be payable beginning 30 days after judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar. Staff Counsel has previously provided an affidavit of those costs including transcript costs. It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the costs set forth in the previously submitted Cost Summary be charged to the respondent.

Dated this 5th day of ————, 1988.

/s/ [Illegible]
Referee

cc: Troy Hill
John T. Berry, Staff Counsel, The Florida Bar
Richard A. Greenberg, Asst. Staff Counsel, The Florida Bar

IN THE SUPREME COURT OF FLORIDA

(Before a Grievance Committee)

CONFIDENTIAL

File No. 13D86H81

SARA APPELBAUM,

Complainant,

v.

TROY HILL,

Accused.

File No. 13D87H48

THE FLORIDA BAR,

Complainant,

v.

TROY HILL,

Accused.

NOTICE AND GRIEVANCE COMMITTEE REPORT RECOMMENDING AN ORDER OF PRIVATE REPRIMAND FOR MINOR MISCONDUCT

TO: Scott K. Tozian, Esquire
PERSONAL & CONFIDENTIAL
Landmark Bank Building
Suite 909
412 East Madison Street
Tampa, Florida 33602
Attorney for the Accused

CERTIFIED MAIL
Return Receipt Requested
No. P 570 896 861

You are hereby notified that the Judicial Circuit Grievance Committee 13-D, on July 1, 1987, found and reports as follows:

I. *Committee Recommendation*: Pursuant to The Florida Bar's Rules of Discipline, Rule 3-7.3(1), the committee found the accused attorney, Troy Hill, guilty of minor misconduct and recommends that he receive a private reprimand to be administered by the President of The Florida Bar before the Board of Governors for violation of Disciplinary Rule 2-103(A) of The Florida Bar's Code of Professional Responsibility.

II. *Comment on Mitigation Aggravating or Evidentiary Matters*: The committee believes that the following comments on mitigating, aggravating and evidentiary matters will be helpful in considering this report:

These two cases involved the same pattern of conduct by the accused attorney committed over the same period of time. Thus, the committee disposed of them together in a consolidated fashion, although evidence as to each was taken by the committee separately.

These cases involved Mr. Hill's direct initiation of in person contact recommending employment, as a legal practitioner, of himself to non-lawyers who had not sought his advice regarding employment of a lawyer. The first case styled above involved solicitation of library employees at the Tampa Public Library. The second case captioned above involved direct solicitation of a security guard at the Holiday Inn Surfside in Clearwater. In both cases, the targets of the solicitation were virtual strangers, and Mr. Solomon's contact was persistent, overbearing, and unwanted. The violations were clear.

In considering the appropriate disposition of the case, the committee referred to the Standards for Imposing Lawyer Sanctions approved by the Board of Governors. In particular, the committee considered Standard 3.0, factors to be Considered in Imposing Sanctions, and Standard 7.0, Violations of Other Duties Owed as a Professional. In considering these factors, the committee was particularly concerned that Mr. Hill informed the committee that, prior to these proceedings, he did not know the rules relating to solicitation and that he did not want to know the rules relating to solicitation. The committee was also concerned that he appeared to have no perception of the impropriety of his conduct or the manner in which it reflects poorly on the profession as a whole. In addition, Mr. Hill's judgment appears impaired, as he apparently does not recognize how people respond to him and fails to read the repugnance with which they react to his persistent and overbearing conduct in which he identifies himself as a lawyer. It is particularly troublesome that this conduct has continued since the complaints resulting in these grievances were filed. Not only does this reflect adversely upon Mr. Hill, but because he continually *informs people that he is a lawyer* [emphasis added], it reflects unfavorably upon the profession as a whole.

The committee considered the duty violated here, particularly as that duty is expressed in the Ethical Considerations, the Disciplinary Rule, and the comment to Rule of Professional Conduct 4-7.3. The committee also considered Mr. Hill's mental state. Although there appears to have been no evil motive or overreaching in that sense, Mr. Hill's persistence and manner clearly created the kind of *undue influence and intimidation* [emphasis added] which form the policy rationale for the rules' prohibition of direct solicitation. The committee also considered the fact that no actual injury caused by the lawyer's conduct in fact occurred. The committee likewise found the following aggravating factors: a pattern

of this kind of misconduct; multiple offenses of this kind; and refusal to acknowledge the wrongful nature of the conduct. On the other hand, the committee found the following mitigating factors: absence of a prior disciplinary record; absence of a dishonest or selfish motive; the apparent personal or emotional problems of the attorney; full and free disclosure to the committee and a cooperative attitude toward the proceedings; and inexperience in the practice of law.

Considering all of these matters, the committee concluded that the appropriate sanction for this clear misconduct was a private reprimand as set forth in Standard 7.4. Because Rule of Discipline 3-5.1(B) provides that minor misconduct is the only type of misconduct for which a private reprimand is an appropriate disciplinary sanction, the committee concluded that this finding of minor misconduct was the appropriate disposition of these cases.

III. *The Costs* of these proceedings are assessed against the accused attorney. The amount of these costs will be determined by Assistant Staff Counsel, The Florida Bar, who will notify the accused separately.

IV. *Committee Vote*: A quorum of not less than three members of the committee being present, one of whom must be the chairman or vice chairman, and another of whom must be a lawyer member, the committee by affirmative vote of a majority of the committee present voted in favor of the committee finding and recommendation stated in item I above. In accordance with the Rules of Discipline, Rule 3-7.3(f), the committee reports the number of committee members voting for, or against, this report as follows:

As to Case No. 13D86H81, seven members voted in favor of the report while no members voted against it.

As to Case No. 13D87H48, six members voted in favor of the report while no members voted against it.

Dated this 8th day of July, 1987.

JUDICIAL CIRCUIT GRIEVANCE
COMMITTEE 13-D

By /s/ C. Timothy Corcoran
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